

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

ROBERT EUGENE VAN WORMER on
behalf of ANN KATHRYN KELLY,

6:17- cv-01021-AA
ORDER

Plaintiffs,

v.

PACIFIC VILLAGE APARTMENTS,
OREGON CIRCUIT COURT FOR LANE
COUNTY, LANE COUNTY SHERIFFS
OFFICE, TRACI DYKSTRA, KATY KISER,
and KATHLEEN KELLY,

Defendants.

AIKEN, District Judge.

Plaintiffs have filed a Motion for Temporary Restraining Order.¹ (doc. 17) The motion is short, perhaps two sentences long, and unclear. Plaintiffs offer no factual background for the motion, nor do they specify which parties they seek to enjoin. The caption of the motion names both “Pacific Village Apartments, et al” as well as “Redwood Park Apartments, et al” as

¹ Plaintiff previously filed a Motion for Injunction asking this Court enjoin the Lane County Circuit Court from continuing with eviction proceedings between the parties. (doc. 7) The Court denied that motion. (doc 8.)

defendants. Based on the unattested documents submitted by plaintiffs, it appears that Ms. Kelly now resides at Redwood Park Apartments, but, importantly, Redwood Park is not a party named in the complaint.

Simply put, the Court cannot discern what relief is being sought by plaintiffs. Given these considerations, the Court finds that none of the factors outlined *Winter v. Nat'l Resources Def Council* are satisfied by the motion. 555 U.S. 7, 21 (2008). Therefore, the Motion for Temporary Restraining Order is denied.

Further, the Court previously issued an Order to Show Cause why this case should not be dismissed for failure to prosecute their claims. (doc. 13) In response, plaintiffs filed a number of assorted documents. (docs. 14-15) In a letter to the Court, Ms. Kelly indicated that she has since moved out of Pacific Village Apartments, and the eviction proceedings which were the subject of the first Motion for Injunction have been completed. Further, plaintiffs failed to address the fact that they have taken no action to have the named defendants served with notice of this lawsuit almost a year after it was filed.

Moreover, in cases where parties proceed *in forma pauperis*, district courts have authority to dismiss an action at any time if the court determines that the suit fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(b)(ii). Plaintiffs allege in the complaint that they are bringing this action pursuant to the American with Disabilities Act (“ADA”). They specifically invoke 42 U.S.C. § 12112 which deals with the ADA’s prohibition on discrimination in employment practices. The factual basis as alleged in the complaint revolves around Ms. Kelly’s eviction from Pacific Village Apartments. Even when the Court liberally construes the pleadings in plaintiff’s favor, the complaint still fails to state a claim on which relief can be granted. No facts involving employment discrimination are alleged here. Moreover the

complaint does not allege that either plaintiff suffers from a disability. Finally, there are no specific allegations in the complaint regarding how any of the named defendants discriminated against either plaintiff or any other person protected by the ADA.

CONCLUSION

For the reasons set forth herein, plaintiffs' Motion for Temporary Injunction (doc. 17) is DENIED. Further, this case is ordered dismissed, without prejudice. All other pending motions are DENIED as moot.

It is so ORDERED.

DATED this 8th day of June 2018.



ANN AIKEN
U.S. District Judge